

## IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 60776-6-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	
YUSUF J. JAMA,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: May 26, 2009

PER CURIAM. Yusuf Jama was convicted of one count of first degree rape, one count of second degree assault, and four counts of second degree possession of stolen property. He argues on appeal his trial counsel was ineffective for failing to challenge an amendment of the information adding a new alternative means to the first degree rape count. In his first trial, Jama was charged with two alternative means: kidnapping and infliction of serious physical injury. The first trial resulted in a hung jury. After the first trial, the State moved to amend the information to add the alternative means of using or threatening to use a deadly weapon or what appears to be a deadly weapon. His counsel did not object to the amendment. The special verdict form reveals that as to the rape count, the jury was unanimous only on the deadly weapon alternative means.

Because the mandatory joinder rule precluded the amendment of the information to add a new alternative means after the first trial ended in a mistrial, and none of the exceptions to the mandatory joinder rule apply, the State concedes error. The State acknowledges that Jama's first degree rape conviction should be reversed and remanded for a new trial. We accept the concession of error.

In response to Jama's concern that, if his sentence on the assault conviction stands and he is convicted of rape in a future trial, he could be precluded from making a "same criminal conduct" argument, the State does not object to vacating the sentence on Jama's second degree assault conviction, so that at any future re-sentencing on the assault conviction after the rape charge has been resolved, any question of "same criminal conduct" is preserved. The remaining issues on appeal are all rendered moot upon the reversal of Jama's rape conviction.

Therefore, the conviction for first degree rape is reversed, the sentence on Jama's second degree assault conviction is vacated, and this matter is remanded for a new trial and ultimately for re-sentencing.

For the court:

  
  
